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TECHNOLOGY CENTER 3600

Darin E. Bartholomew
Patent Department
Deere & Company
One John Deere Place
Moline, IL 61265

In re Application of :
Hans Kappelhoff : DECISION ON PETITION
Application No. 10/733,548 : TO WITHDRAW
Filed: December 11, 2003 : ABANDONMENT

For: GATHERING AND PICKING DEVICE

This is a decision on applicant's Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on July 11, 2005.

The petition is DISMISSED.

A review of the file record indicates that the application was held abandoned for failure to timely file a response to the Office action mailed July 26, 2004 which set a three month shortened statutory period. No response was received and a Notice of Abandonment was sent on March 25, 2005.

Petitioner contends that a response was filed on October 26, 2004. In support thereof, petitioner submits, a copy of a response bearing a Certificate of Transmission signed by A. Nicholas Trausch and dated October 26, 2004.

Petitioner's evidence of a timely filing based on a Certificate of Transmission is considered to be insufficient. In this regard, any petition to withdraw the holding of abandonment based upon a Certificate of Transmission must include the following requirements:

- (1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and
- (2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date

indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512), by the person who signed the certificate.

While meeting requirement (1) above the petition fails, under requirement (2), to also include a statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of sending the original response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate, in this instance A. Nicholas Trausch. The statement made by Darin E. Bartholomew attesting to the timely mailing has been noted, however, absent any extenuating circumstances, this statement must be made by the person who signed the certificate.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."



Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6619

RAR/jc: 9/20/05